

TITLE 16
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
CHAPTER 6
CREDIT LIFE AND CREDIT DISABILITY INSURANCE

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Historical Note: Chapter 6 of title 16, Administrative Rules, is based substantially upon Chapter 7, title V, Department of Regulatory Agencies entitled "Credit Life and Credit Disability Insurance." [Eff 6/1/75; R 6/22/81]

SUBCHAPTER 1

GENERAL PROVISION

§16-6-1 Purpose and authority. The purpose of this chapter is to protect the interests of debtors and the public in this State by providing a system of rate, policy form, and operating standards for the transaction of credit life and credit disability insurance. [Eff 6/22/81; comp 12/16/88] (Auth: HRS §§431:2-201, 431:10B-113) (Imp: HRS §431:10B-101)

SUBCHAPTER 2

RIGHTS AND TREATMENT OF DEBTORS

§16-6-2 Multiple plans of insurance. If a creditor makes available to the debtors more than one plan of credit life insurance or more than one plan of credit disability insurance, all debtors must be informed of all available plans. [Eff 6/22/81; comp 12/16/88] (Auth: HRS §§431:2-201, 431:10B-113) (Imp: HRS §431:10B-107)

§16-6-3 Substitution. When a creditor requires credit life insurance, credit disability insurance, or both, as additional security for an indebtedness, the debtor shall be given the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by the debtor or procuring and furnishing the required coverage through any insurer authorized to transact insurance business in this State. If this section is applicable, the debtor shall be informed by the creditor of the right to provide alternative coverage before the transaction is completed. The creditor shall give the borrower written notice that the borrower is free to procure the required insurance coverage from any insurance company authorized to do business in the State as required by section 479-2, HRS. [Eff 6/22/81; comp 12/16/88] (Auth: HRS §§431:2-201, 431:10B-113) (Imp: HRS §431:10B-107)

§16-6-4 Evidence of coverage. (a) All credit insurance shall be evidenced by an individual policy, or, in the case of group insurance, by a certificate of insurance. The individual policy or certificate of insurance shall be delivered to the debtor in accordance with section 431:10B-107(a), HRS.

(b) Each individual policy or certificate of insurance shall set forth such information as is required by sections 431:10B-107(b), 431:10B-109(b), and any other appropriate sections of the HRS. [Eff 6/22/81; am and comp 12/16/88] (Auth: HRS §§431:2-201, 431:10B-113) (Imp: HRS §§431:10B-107(b), 431:10B-109(b))

§16-6-5 Claims processing. All credit insurance claims shall be processed in accordance with the appropriate sections of the HRS. [Eff 6/22/81; comp 12/16/88] (Auth: HRS §§431:201, 431:10B-113) (Imp: HRS §431:10B-111)

§16-6-6 Termination of coverage. (a) If a debtor is covered by a group credit insurance policy providing for the payment of single premiums to the insurer, then provision shall be made by the insurer that in the event of termination of the policy for any reason, insurance coverage with respect to any debtor insured under such policy shall be continued for the entire period for which the single premium has been paid, subject to the debtor's right to cancel the insurance at any time by express action.

(b) If a debtor is covered by a group credit insurance policy providing for the payment of premiums to the insurer on a monthly outstanding balance basis, then the policy shall provide that, in the event of termination of such policy for whatever reason, the insured debtor shall be notified that coverage will continue for thirty days from the date of notice, except where replacement of the coverage by the same or another insurer in the same or greater amount takes place without lapse of coverage. The notice required in this section shall be given by the insurer or, at the option of the insurer, by the creditor. [Eff 6/22/81; comp 12/16/88] (Auth: HRS §§431:2-201, 431:10B-113) (Imp: HRS §431:10B-107)

§16-6-7 Renewal or refinancing of indebtedness. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of such termination prior to scheduled maturity, a refund shall be paid or credited to the debtor as provided in section 16-6-13. In any renewal or refinancing of the indebtedness, the effective date of the coverage as respects any policy provision shall be deemed to be the first date on which the debtor became insured under the policy covering the indebtedness which was renewed or refinanced, at least to the extent of the amount and term of the indebtedness outstanding at the time of

renewal and refinancing of the debt. [Eff 6/22/81; comp 12/16/88] (Auth: HRS §§431:2-201, 431:10B-113) (Imp: HRS §431:10B-106)

§16-6-8 Voluntary prepayment of indebtedness. If a debtor prepays the indebtedness other than as a result of the debtor's death or through a lump sum disability payment:

- (1) Any credit life insurance covering such indebtedness shall be terminated and an appropriate refund of the credit life insurance premium shall be paid to the debtor in accordance with section 16-6-13; provided insurance furnished by a prepaid individual policy may be continued if the debtor so elects in a separate written instrument signed and delivered to the insurer at the time of the prepayment;
- (2) Any credit disability insurance covering the indebtedness shall be terminated and an appropriate refund of the credit disability insurance premium shall be paid to the debtor in accordance with section 16-6-13, and if a claim under such coverage is in progress at the time of prepayment, the claim shall continue as if there had been no prepayment; provided insurance furnished by a prepaid individual policy may be continued if the debtor so elects in a separate written instrument signed and delivered to the insurer at the time of the prepayment. [Eff 6/22/81; comp 12/16/88] (Auth: HRS §§431:2-201, 431:10B-113) (Imp: HRS §431:10B-109)

§16-6-9 Involuntary prepayment of indebtedness. If an indebtedness is prepaid by the proceeds of a credit life insurance policy covering the debtor or by a lump sum payment of a disability claim under a credit insurance policy covering the debtor, then it shall be the responsibility of the insurer to see that the following refunds are paid to the beneficiary, other than the creditor, named by the debtor or to the debtor's estate:

- (1) In the case of prepayment by the proceeds of a credit life insurance policy, an appropriate refund of the credit disability premium in accordance with section 16-6-13;
- (2) In the case of prepayment by a lump sum disability claim, an appropriate refund of the credit life insurance premium in accordance with section 16-6-13; and
- (3) In either case, a refund of the unearned finance charge computed in accordance with the applicable finance laws or rules of this State which apply to voluntary prepayment provided that premiums paid

to the insurer are based on an amount of insurance which includes unearned finance charges. [Eff 6/22/81; comp 12/16/88] (Auth: HRS §§431:2-201, 431:10B-113) (Imp: HRS §431:10B-109)

SUBCHAPTER 3

PREMIUMS, RATE DEVIATIONS, REFUNDS, AND COLLECTION AND REMITTANCE OF PREMIUMS

§16-6-10 Premium rates. Benefits provided by credit life and credit disability insurance policies must be reasonable in relation to the premium charged. This requirement is assumed to be satisfied without any actuarial or statistical filing if the premium rates do not exceed the provisions of sections 16-6-11 and 16-6-12. [Eff 6/22/81; comp 12/16/88] (Auth: HRS §§431:2-201, 431:10B-113) (Imp: HRS §§431:10B-108, 431:10B-109)

§16-6-11 Credit life insurance premium rates. (a) For declining balance term credit life insurance, a single premium of forty cents per \$100 of initial insured indebtedness repayable in equal monthly installments over a one-year period. Single premium rates for indebtedness repayable in equal monthly installments other than twelve in number shall be one-twelfth of the foregoing premium rate multiplied by the number of full months in the scheduled repayment period.

(b) When monthly premiums are charged on the basis of the then outstanding loan balance, a monthly premium rate not to exceed 61.8 cents per \$1,000 of outstanding balance will be deemed the actuarial equivalent of the forty cents rate.

(c) For single life level term credit life insurance, a single premium of seventy-four cents per \$100 per annum.

(d) For joint life declining balance term credit life insurance, a single premium rate of seventy cents per \$100 of initial insured indebtedness repayable in twelve equal monthly installments over a one-year period.

(e) A combination of the appropriate rate for level term and the appropriate rate for declining balance term (with equal decrements), if coverage provided is a combination of level term and declining balance term (with equal decrements).

(f) The actuarial equivalent of the rates in subsections (a), (b), (c), (d) and (e) if the benefits provided are other than those described in these five

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subsections, or if premiums are to be determined according to the age of the insured debtor or by age bracket.

(g) The premium rates specified above are presumed reasonable only in relation to a plan of death benefits:

- (1) Which does not contain any exclusions or exceptions, other than suicide within one year of the incurred indebtedness; and
- (2) Which does not contain any age restrictions, or only age restrictions making ineligible for coverage debtors age sixty-five or over at the time the indebtedness is incurred, or debtors who will have attained age sixty-six or over on the maturity date of the indebtedness.

(h) If any insurer files for approval any form providing coverage more restrictive than that described in subsection (g) above, the insurer shall demonstrate to the satisfaction of the insurance commissioner that the premium rates to be charged for such restricted coverage shall produce a loss ratio not less than that contemplated for standard coverage at the premium rates described in sections (a) to (f) above. [Eff 6/22/81; am and comp 12/16/88] (Auth: HRS §§431:2-201, 431:10B-113) (Imp: HRS §431:10B-109)

§16-6-12 Credit disability insurance premium rates. (a) If premiums are paid in one sum for the entire duration of the indebtedness, the rates for \$100 of initial insured indebtedness repayable in equal installments as shown in the exhibit entitled "Credit Disability Insurance Premium Rates," dated July 1, 1988, located at the end of this chapter and which is made a part of this section, shall be deemed reasonable in relation to the benefits provided. Premium rates for all indebtedness repayable in installments shall be consistent with the rates in the exhibit entitled "Credit Disability Insurance Premium Rates," dated July 1, 1988, located at the end of this chapter.

(b) If premiums are paid on the basis of a premium per month per \$1,000 of outstanding indebtedness, these premiums shall be computed according to the following formula:

$$O_{pn} = \frac{20}{n+1} SP_n$$

where SP_n = Single premium rate per \$100 of initial insured indebtedness repayable in n equal monthly installments.

O_{pn} = Monthly outstanding balance premium rate per \$1,000.

n = Original repayment period in months.

(c) The actuarial equivalent of sections 16-6-11 and 16-6-12 if the coverage provided is a constant maximum indemnity for a given period of time.

(d) An appropriate combination of the premium rate for a constant maximum indemnity for a given period of time and the premium rate for a maximum indemnity which decreases in even amounts per month, if the coverage period is a combination of a constant maximum indemnity for a given period of time after which the maximum indemnity begins to decrease in even amounts per month.

(e) The actuarial equivalent of the rates in subsections (a), (b), (c) and (d) if the benefits provided are other than those described in these four subsections.

(f) The outstanding balance rate for credit disability insurance, unlike credit life insurance, varies by term (months). Because of this, it is difficult or impossible to compute a single maximum outstanding balance rate applicable to all loans made under an open-end or revolving credit plan. If the term of the loan is clearly defined, an appropriate rate or rates can be computed. However, this is not the case in most revolving credit situations.

(g) The premium rates specified in the table at the end of this chapter are considered reasonable for policies which:

- (1) Do not contain any exclusions except disabilities resulting from intentional self-inflicted injury, pregnancy, foreign residence, flights in non-scheduled aircraft, and pre-existing illness, disease or physical condition for which the debtor received or was professionally advised to obtain medical advice, consultations or treatment during the six-month period preceding the effective date of the debtor's coverage and which caused disabilities within the six months following the effective date of coverage.
- (2) Do not contain any age restrictions, or only age restrictions making ineligible for coverage those debtors sixty-five or over at the time the indebtedness is incurred, or debtors who will have attained age sixty-six or over on the maturity date of the indebtedness.
- (3) May condition coverage on the debtor's being in active employment at the time the indebtedness is incurred.
- (4) Provide for a daily benefit equal in amount to one-thirtieth of the scheduled monthly payments on the indebtedness.

- (5) Contain a definition of "disability" which provides coverage during the initial twelve months of disability even though the insured is able to perform an occupation other than the one he held at the time disability occurred, except this paragraph shall not apply to lump sum disability coverage.
- (h) If any insurer files for approval any forms providing coverage more restrictive than that described in subsection (g) the insurer shall demonstrate to the satisfaction of the insurance commissioner that the premium rates to be charged for such restricted coverage will produce a loss ratio not less than the contemplated for standard coverage at the premium rates described in subsections (a), (b), (c), (d), (e) and (f). [Eff 6/22/81; am and comp 12/16/88] (Auth: HRS §§431:2-201, 431:10B-113) (Imp: HRS §§431:10B-108, 431:10B-109)

§16-6-13 Refunds. (a) Section 431:10B-109, HRS, requires that the formula to be used in computing refunds be filed with and approved by the insurance commissioner.

- (1) Schedules used to compute the refund in connection with single premium declining balance term credit life insurance and single premium credit disability insurance must provide for a refund at least equal to that which would be provided by application of the so-called "Rule of 78" (also called the "sum of the digits" method).
- (2) Schedules used to compute the refund in connection with single premium level term credit life insurance must provide for a refund at least equal to the amount which would be provided by the "pro rata" method.
- (3) An appropriate combination of the pro rata method for level term and the Rule of 78 method for declining balance term if the coverage provided is a combination of level term and declining balance term.
- (b) At the option of the insurer but consistent with subsection (a) either:
 - (1) No charge for credit insurance be made for the first fifteen days of a month and full month be charged for sixteen days or more of a month; or
 - (2) A refund be made on a pro rata basis for each day within the month.
 - (c) A refund or credit need not be made where the amount thereof is less than one dollar.
- (d) The requirements for filing refund formulas shall be considered met if they are set forth in the individual policy or group certificate filed with and approved by the insurance commissioner. [Eff 6/22/81; am and comp 12/16/88] (Auth: HRS §§431:2-201, 431:10B-113) (Imp: HRS §431:10B-109)

§16-6-14 Collection and remittance of premiums. If the creditor adds identifiable insurance charges or premiums for credit insurance to the indebtedness, and any direct or indirect finance, carrying, credit, or service charge is made to the debtor on such insurance charges or premiums, the creditor must remit and the insurer shall collect on a single premium basis only. [Eff 6/22/81; comp 12/16/88] (Auth: HRS §§431:2-201, 431:10B-113) (Imp: HRS §431:10B-108)

SUBCHAPTER 4

SUPERVISION OF CREDIT INSURANCE OPERATIONS AND PROHIBITED TRANSACTIONS

§16-6-15 Responsibility of insurer to review each lender's account. (a) Each insurer transacting credit insurance in this State shall be responsible to make a reasonable review of each creditor's procedures, at least annually, with respect to its credit insurance business with such creditor to assure compliance with the laws of this State and shall be prepared to exhibit the results of such review upon request of the insurance commissioner.

(b) The review required in subsection (a) shall include but shall not be limited to:

- (1) A determination that the proper rates are being charged by the creditor;
- (2) A determination that the proper refunds are being made;
- (3) A determination that all claims are being filed and properly handled;
- (4) A determination that amounts of insurance payable on death in excess of the amounts necessary to discharge the indebtedness are properly refunded; and
- (5) A determination that the creditor is promptly and fairly processing complaints concerning its credit insurance operations and is maintaining proper procedures for and records of the complaints processed. [Eff 6/22/81; comp 12/16/88] (Auth: HRS §§431:2-201, 431:10B-113) (Imp: HRS §§431:10B-105, 431:10B-106, 431:10B-108, 431:10B-109, 431:10B-111)

§16-6-16 Prohibited transactions. The following practices, when engaged in by insurers in connection with the sale or placement of credit insurance, or as an inducement thereto, shall constitute unfair methods of competition and shall be subject to section 431:13-102, HRS:

- (1) The offer or grant by an insurer to a creditor of any special advantage or any service not set out in either the group insurance contract or in the agency contract, other than the payment of agents' commissions;
- (2) Agreement by an insurer to deposit with a bank or financial institution money or securities of the insurer with the design or intent that the same shall affect or take the place of a deposit of money or securities which otherwise would be required of the creditor by such bank or financial institution as a compensating balance or offsetting deposit for a loan or other advancement; and
- (3) Deposit by an insurer of money or securities without interest or at a lesser rate of interest than is currently being paid by the creditor bank or financial institution to other depositors of like amounts. This paragraph shall not be construed to prohibit the maintenance by an insurer of such demand deposits or premium deposit accounts as are reasonably necessary for use in the ordinary course of the insurer's business. [Eff 6/22/81; am and comp 12/16/88] (Auth: HRS §§431:2-201, 431:10B-113) (Imp: HRS §431:13-103)

Amendments to and compilation of chapter 16-6, Hawaii Administrative Rules, on the Summary page dated November 1, 1988, were adopted on November 1, 1988, following a public hearing held on October 31, 1988, after public notices were given in the Honolulu Star-Bulletin and Honolulu Advertiser on October 8, 1988, October 15, 1988, and October 22, 1988.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Robin K. Campaniano
ROBIN K. CAMPANIANO
Insurance Commissioner

APPROVED AS TO FORM: Date 11/17/88

/s/ Ann Catherine Blank
Deputy Attorney General

APPROVED: Date 12/2/88

/s/ Robert A. Alm
ROBERT A. ALM, Director

APPROVED: Date 12/6/88

/s/ John Waihee
JOHN WAIHEE
Governor
State of Hawaii

December 6, 1988
Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-6
Hawaii Administrative Rules
November 1, 1988

SUMMARY

1. Title amended.
2. §16-6-4 is amended.
3. §§16-6-11 to 16-6-13 are amended.
4. §16-6-16 is amended.
5. Chapter 16-6 is compiled.

CREDIT DISABILITY INSURANCE PREMIUM RATES

7/1/88

Original Number of Equal Monthly Installments	Benefits Payable After:				
	The 7th Day of Disability Retroactive to 1st Day	The 14th Day of Disability		The 30th Day of Disability	
		Retroactive to 1st Day	Non- Retroactive	Retroactive to 1st Day	Non- Retroactive
6	\$1.23	\$1.22	\$.93	\$.80	\$.46
7	1.33	1.31	1.07	.87	.54
8	1.42	1.41	1.15	.94	.60
9	1.51	1.50	1.23	1.01	.65
10	1.59	1.59	1.31	1.07	.70
11	1.68	1.67	1.39	1.11	.75
12	1.76	1.75	1.45	1.15	.79
13	1.82	1.81	1.51	1.19	.83
14	1.88	1.87	1.57	1.23	.87
15	1.94	1.93	1.63	1.27	.90
16	1.99	1.99	1.69	1.31	.94
17	2.04	2.04	1.74	1.35	.97
18	2.10	2.10	1.80	1.38	1.01
19	2.14	2.14	1.85	1.41	1.04
20	2.19	2.19	1.89	1.43	1.07
21	2.23	2.23	1.93	1.47	1.10
22	2.28	2.28	1.98	1.49	1.12
23	2.32	2.32	2.02	1.52	1.15
24	2.37	2.37	2.06	1.55	1.17
25	2.41	2.41	2.11	1.57	1.19
26	2.45	2.45	2.14	1.59	1.21
27	2.49	2.49	2.18	1.62	1.23
28	2.53	2.53	2.22	1.64	1.25
29	2.57	2.57	2.25	1.66	1.27
30	2.60	2.60	2.29	1.68	1.30
31	2.64	2.64	2.32	1.70	1.32
32	2.67	2.67	2.36	1.72	1.34
33	2.71	2.71	2.39	1.74	1.36
34	2.73	2.73	2.43	1.77	1.38
35	2.77	2.77	2.46	1.79	1.40
36	2.80	2.80	2.49	1.81	1.42
37	2.83	2.83	2.53	1.82	1.43
38	2.86	2.86	2.56	1.84	1.45
39	2.89	2.89	2.59	1.86	1.47
40	2.93	2.93	2.61	1.88	1.49
41	2.95	2.95	2.65	1.90	1.51
42	2.99	2.99	2.68	1.92	1.53
43	3.02	3.02	2.71	1.93	1.54
44	3.04	3.04	2.74	1.95	1.56
45	3.08	3.08	2.77	1.97	1.58
46	3.11	3.11	2.79	1.98	1.59
47	3.14	3.14	2.82	2.00	1.61
48	3.16	3.16	2.85	2.02	1.63
49	3.19	3.19	2.88	2.04	1.65
50	3.22	3.22	2.91	2.05	1.66
51	3.24	3.24	2.93	2.06	1.68
52	3.27	2.27	2.96	2.08	1.69
53	3.30	3.30	2.99	2.10	1.70
54	3.32	3.32	3.02	2.11	1.72
55	3.35	3.35	3.04	2.12	1.74
56	3.38	3.38	3.07	2.14	1.76
57	3.40	3.40	3.10	2.15	1.77
58	3.42	3.42	3.12	2.17	1.78
59	3.45	3.45	3.14	2.18	1.80
60	3.48	3.48	3.16	2.20	1.81

Original Number of Equal Monthly Installments	Benefits Payable After:				
	The 7th Day of Disability Retroactive to 1st Day	The 14th Day of Disability		The 30th Day of Disability	
		Retroactive to 1st Day	Non- Retroactive	Retroactive to 1st Day	Non- Retroactive
61	\$3.51	\$3.51	\$3.19	\$2.22	\$1.82
62	3.54	3.54	3.21	2.23	1.84
63	3.56	3.56	3.23	2.24	1.84
64	3.58	3.58	3.25	2.26	1.85
65	3.60	3.60	3.27	2.27	1.86
66	3.62	3.62	3.29	2.28	1.88
67	3.64	3.64	3.30	2.29	1.88
68	3.65	3.65	3.32	2.30	1.89
69	3.67	3.67	3.34	2.31	1.90
70	3.69	3.69	3.36	2.32	1.92
71	3.72	3.72	3.38	2.33	1.92
72	3.74	3.74	3.40	2.35	1.93
73	3.75	3.75	3.42	2.35	1.94
74	3.77	3.77	3.44	2.36	1.95
75	3.79	3.79	3.46	2.37	1.96
76	3.81	3.81	3.48	2.39	1.97
77	3.83	3.83	3.49	2.39	1.98
78	3.85	3.85	3.51	2.40	1.98
79	3.86	3.86	3.53	2.41	2.00
80	3.88	3.88	3.54	2.42	2.01
81	3.90	3.90	3.56	2.43	2.02
82	3.92	3.92	3.58	2.45	2.02
83	3.93	3.93	3.60	2.45	2.03
84	3.95	3.95	3.62	2.46	2.04
85	3.97	3.97	3.64	2.47	2.05
86	3.99	3.99	3.65	2.48	2.06
87	4.01	4.01	3.67	2.49	2.06
88	4.03	4.03	3.69	2.49	2.08
89	4.04	4.04	3.71	2.51	2.09
90	4.06	4.06	3.73	2.52	2.10
91	4.08	4.08	3.75	2.53	2.10
92	4.09	4.09	3.76	2.53	2.11
93	4.11	4.11	3.77	2.54	2.12
94	4.13	4.13	3.79	2.55	2.12
95	4.14	4.14	3.81	2.56	2.14
96	4.16	4.16	3.83	2.57	2.14
97	4.18	4.18	3.84	2.57	2.15
98	4.19	4.19	3.85	2.59	2.16
99	4.21	4.21	3.87	2.59	2.16
100	4.22	4.22	3.89	2.60	2.18
101	4.24	4.24	3.91	2.61	2.18
102	4.26	4.26	3.92	2.62	2.19
103	4.28	4.28	3.93	2.63	2.20
104	4.29	4.29	3.95	2.63	2.20
105	4.31	4.31	3.97	2.64	2.21
106	4.32	4.32	3.99	2.65	2.22
107	4.33	4.33	4.00	2.66	2.24
108	4.35	4.35	4.01	2.67	2.24
109	4.37	4.37	4.03	2.67	2.24
110	4.39	4.39	4.05	2.69	2.25
111	4.40	4.40	4.06	2.69	2.26
112	4.42	4.42	4.07	2.70	2.27
113	4.44	4.44	4.09	2.71	2.28
114	4.45	4.45	4.11	2.71	2.28
115	4.46	4.46	4.12	2.73	2.29
116	4.48	4.48	4.13	2.73	2.30
117	4.49	4.49	4.15	2.74	2.31
118	4.50	4.50	4.17	2.75	2.32
119	4.52	4.52	4.18	2.76	2.32
120	4.54	4.54	4.19	2.77	2.33

DEPARTMENT OF REGULATORY AGENCIES

CHAPTER 4

HAWAII INSURANCE GUARANTY ASSOCIATION
PLAN OF OPERATION

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Historical Note: Chapter 4 of Title 16, Administrative Rules, is based substantially upon Chapter 5, Title V, Department of Regulatory Agencies, entitled "Hawaii Insurance Guaranty Association Plan of Operation." [Eff 11/20/72 R 6/22/81]

SUBCHAPTER 1

GENERAL PROVISIONS

§16-4-1 Plan of operation. This plan of operation (hereinafter referred to as the plan) has been formulated pursuant to the Hawaii Insurance Guaranty Association Act (hereinafter referred to as the act), as specified in section 431:16-109, HRS. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-106)

§16-4-2 Membership. Insurers which were admitted as of May 25, 1971 to transact the kinds of insurance covered by the act in the State of Hawaii shall be members of the Hawaii Insurance Guaranty Association. Each insurer admitted after May 25, 1971 to transact the kinds of insurance covered by the act shall automatically become, effective on the date of its admission, a member of the guaranty association. An insurer which ceases to be admitted after May 25, 1971 shall automatically cease to be a member effective on the day following the termination or expiration of its certificate of authority to transact the kinds of insurance covered by the act, provided such insurer shall remain liable for any assessments based on insolvencies occurring prior to the termination of its certificate. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-106)

SUBCHAPTER 2

THE PLAN

§16-4-3 Board of directors. (a) There shall be a board of directors in accordance with the provisions of section 431:16-107, HRS.

- (1) The board of directors shall consist of not less than five nor more than nine member insurers. The board of directors shall be elected by the member insurers and shall fairly represent member insurers. The election shall be by weighted vote based on the net direct premiums for the preceding calendar year, with each member insurer to have at least one vote. In the event the insurance commissioner determines that all member insurers are not fairly represented, the commissioner shall disapprove the membership of the board and order another election. In the interim between such disapproval and the subsequent election, the commissioner may appoint a temporary board of directors which fairly represents the member insurers.
- (2) Terms of directors shall be staggered as equally as possible between two and three years.
- (3) Upon the election of subsequent members to the board of directors, the association shall notify the commissioner and request the insurance commissioner's written approval of the members.
- (4) The members elected to the board of directors shall elect a chairperson and such other officers as they may deem necessary from among their members, each to serve for a period of one year.
- (b) At any meeting of the board, each member of the board shall have one vote. A majority of the board shall constitute a quorum for the transaction of business and the acts of a majority of the board members present at a meeting at which a quorum is present shall be the acts of the board except that an affirmative vote of a majority of the full board is required to:
 - (1) Approve a contract with a servicing facility; or
 - (2) Levy an assessment [or provide for a refund]; or
 - (3) Borrow money.
- (c) Members of the board shall serve without compensation. However, they may be reimbursed for expenses incurred by them as board members. Such expenses shall be submitted to the board for approval and subsequent payment, provided that the approval of a majority of the full board shall be required for a total reimbursement to an individual member exceeding \$100. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-107)

§16-4-4 Board meetings. (a) An annual meeting of the board shall be held at the office of the commissioner during the month of March, unless the board upon proper notice shall designate some other date or place. At each annual meeting the board shall:

- (1) Review the plan and submit proposed amendments, if any, to the membership for approval or rejection. A majority vote of those voting shall be necessary for approval of amendments;
 - (2) Review each outstanding contract with servicing facilities and, to the extent possible, make any necessary corrections, improvements, or additions;
 - (3) Review operating expenses and covered claims costs and determine if an assessment, or a refund of a prior assessment, and the amount of either, is necessary for the proper administration of the guaranty association. If such assessment or refund is determined to be necessary, the board shall levy such assessment or make such refund in accordance with section 431D-8(a)(3) and (b)(6), HRS. The board may waive the collection from a member insurer when the amount produces an assessment of less than \$10; and
 - (4) Review, consider, and act on any other matters deemed by it to be necessary and proper for the administration of the guaranty association.
- (b) The board may determine a schedule or such other regular meetings as it may deem appropriate. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-108)

§16-4-5 Emergency meetings. The board shall hold an emergency meeting promptly after receiving notice from the insurance commissioner of the insolvency of any member insurer. At such meeting or a subsequent meeting the board shall:

- (1) Consider and decide whether or not an insurer has, in fact, become an insolvent insurer within the meaning of the act;
- (2) Consider and decide what method or methods, permitted under section 431D-8(a)(6) HRS, shall be adopted to pay and discharge covered claims of the insolvent insurer for each of the kinds of insurance as specified in section 431D-3, HRS, but in no event shall an insolvent insurer be appointed as a servicing facility. If the board decides to appoint a servicing facility, every effort shall be made to secure the receiver's, liquidator's or statutory successor's participation in such contract to assist the guaranty association in the performance of its legally imposed duties. Every effort shall also be made to permit the guaranty association to directly pursue all reinsurance recoveries permitted to the insolvent insurer;
- (3) Consider and decide what immediate action, if any, should be taken to assure the proper retention of the records of the insolvent insurer necessary to the prompt, economical handling by the guaranty association of covered claims. In this effort, the board, or a designated servicing facility, shall work closely with the receiver, liquidator, or statutory successor and seek the liquidator's, receiver's, or statutory successor's approval of having the board, or a designated servicing facility, take direct physical control of that portion of the insolvent insurer's records deemed by the board to be necessary for the discharge of its duties imposed by law;
- (4) Consider and decide what persons, if any, should be hired by the guaranty association to implement and carry out broad directives of the board made pursuant to its statutorily imposed duties. Such persons may include a managing secretary who shall be:
 - (A) Knowledgeable about insurance matters;
 - (B) Conversant with the law as it relates to covered claims;
 - (C) Administratively capable of implementing the board's directives; and
 - (D) Would have such authority as is properly delegated by the board.Such persons may also include attorneys-at-law, insurance actuaries, accountants, claims adjusters and any others whose advice or services are deemed by the board to be necessary to the discharge of its duties. The board may agree to compensate such persons as to best serve the interest of the guaranty association and the public;
- (5) Consider and decide to what extent and in what manner the board shall review and contest settlements and releases or judgments, orders, decisions, verdicts, and findings to which the insolvent insurer or its insureds were parties in accordance with sections 431D-8(a)(4) and 431D-18, HRS;
- (6) Consider and decide what assessment, if any, should be levied or whether any refunds should be made to member insurers. If an assessment or refund is determined to be necessary, the board shall levy the assessment or make the refund in accordance with section [431D-8(a)(3) and (b)(6), HRS. Notices of assessments shall be in sufficient detail as to form a basis for the payment of the assessments by the member insurers. The board may waive the collection from a member insurer when the amount produces an assessment of less than \$10;
- (7) Take all steps permitted by law, and deemed necessary to protect the guaranty association's rights against the estate of the insolvent insurer; and
- (8) Consider and decide any other matter deemed by it to be necessary for the proper administration of the guaranty association. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-108)

§16-4-6 Special meetings. Special meetings of the board may be called by the chairperson and shall be called at the request of any two board members. Not less than five days written notice shall be given to each board member of the time, place, and purposes of any special meeting, except that an emergency meeting may be held upon at least forty-eight hours oral or written notice, provided each member of the board has reasonable opportunity to attend. Any board member not present may consent or object in writing to any specific action taken by the board. Any action approved by the required number of board members at any special or emergency meeting, including those consenting in writing, shall be as valid a board action as though authorized at a regular meeting of the board. At an emergency meeting, the board may consider and decide any matter deemed by it to be necessary for the proper administration of the guaranty association. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-108)

§16-4-7 Operations. (a) The official address of the association shall be the address of the chairperson of the board unless otherwise designated by the board.

(b) The board may employ such persons, firms or corporations to perform such administrative functions as are necessary for the board's performance of the duties imposed on the guaranty association. The board may use

the mailing address of such a person, firm or corporation as the official address of the guaranty association. Such persons, firms or corporations shall keep such records of their activities as may be required by the board.

(c) The board may open one or more bank accounts for use in the guaranty association business. Reasonable delegation of deposit and withdrawal authority to such accounts for guaranty association business may be made consistent with prudent fiscal policy. The board may borrow money from any person or organization including a member insurer, or from an appointed servicing facility as the board in its judgment deems advantageous for the guaranty association and the public.

(d) The board may levy a non-pro rate assessment not to exceed \$25 to cover the reasonable cost of administering the guaranty association, such assessment to be credited against any subsequent pro rata assessment.

(e) The board may contract with one or more persons, firms or corporations to serve as servicing facilities, should the board receive notice from the insurance commissioner of an insolvency of a member insurer. Such contract terms shall comply with the act and be subject to the approval of the insurance commissioner. Such contract terms may include:

- (1) Terms of payment to the servicing facility.
- (2) Extent of authority delegated to the servicing facility.
- (3) Procedures for giving the receiver timely notice, sufficient to protect the guaranty association's right of subrogation against the receiver, liquidator, or statutory successor, of each and every covered claim not otherwise reported to the receiver, liquidator or statutory successor.
- (4) Procedures contemplated for the handling of covered claims as defined in the act, which procedures shall include the right to request from or offer to any person arbitration of the person's covered claim.
- (5) Procedures for the printing or preparation of forms necessary for the proper handling of covered claims.
- (6) Requirement of bond for faithful performance.
- (7) Any other provisions deemed necessary and desirable by the board.
- (f) In order to effectuate the purposes set forth in section 431D-13, HRS, the board shall:
 - (1) Develop procedures for discovering and reporting to the insurance commissioner any member insurer that may be insolvent or in a financial condition hazardous to the policyholders or the public. No such reports shall be considered public documents.
 - (2) At its annual meeting, or at any other meeting called for this purpose, review the insurance law and rules with a view toward making recommendations to the insurance commissioner for the detection and prevention of insurer insolvencies.
 - (3) Develop forms for reporting and report the history and causes of each insolvency processed, submit each report to the insurance commissioner, and maintain a continuing file of such reports.

[Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-108)

§16-4-8 Records and reports. (a) A written record of the proceedings of each board meeting shall be made. The original of this record shall be retained by the chairperson with copies being furnished to each board member and the insurance commissioner, and, upon written request, to any member insurer.

(b) The board shall make an annual report to the insurance commissioner and to the member insurers not later than March 30 of each year. Such report shall include a review of the guaranty association's activities and an accounting of its income and disbursements for the past year.

(c) After the appointment of a receiver, liquidator or statutory successor and the levy of an assessment by the guaranty association, the board shall, once every year, appoint three member insurers, not then represented on the board, to serve as an audit committee. This committee shall see to the proper auditing of all of the books and records of the guaranty association and shall report its findings to the board. The report shall be available to all member insurers, upon written request. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-108)

§16-4-9 Appeal. Any member insurer aggrieved by an action or decision of the guaranty association shall appeal to the board before appealing to the insurance commissioner. If such member insurer is aggrieved by the final action or decision of the board or if the board does not act on such complaint within thirty days, the member insurer may appeal to the insurance commissioner within thirty days after the action or decision of the board or the expiration of the thirty days. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-108)

§16-4-10 Indemnification. (a) All persons described in section 431D-17, HRS, except the insurance commissioner and the commission's representatives, shall be indemnified by the guaranty association against all expenses incurred in the defense of any action, suit or proceeding brought against such person on account of any action taken by such person in the performance of such person's powers and duties under the act, unless such person shall be finally adjudged to have committed a breach of duty involving gross negligence, bad faith, wilful misfeasance, or reckless disregard of the responsibilities of such person's office. In the event of settlement before final adjudication, such indemnity shall be provided only if the guaranty association is advised by independent counsel that such person did not, in counsel's opinion, commit such a breach of duty.

(b) The expense of the indemnification herein provided shall be paid for by the member insurers by an assessment levied by the board in accordance with section 431D-8(a)(3), HRS.

(c) Subsection (a) is intended to operate as a supplement and additional safeguard to, and not in place of, the immunity granted by section 431D-17, HRS. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-108)

DEPARTMENT OF REGULATORY AGENCIES

Chapter 4, Hawaii Insurance Guaranty Association Plan of Operation Rules of Practice and Procedure, on the Summary Page dated May 28, 1981 was adopted on May 28, 1981 following a public hearing held on May 28, 1981, after public notice was given in the Honolulu Star-Bulletin on May 8, 1981.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Mary G.F. Bitterman
MARY G.F. BITTERMAN
Director of Regulatory Agencies

APPROVED AS TO FORM:

/s/ Alan T. Shimabukuro
Deputy Attorney General

/s/ George R. Ariyoshi
GEORGE R. ARIYOSHI
Governor
State of Hawaii

Date: June 10, 1981

June 12, 1981
Filed